

DANIEL G. BOGDEN
United States Attorney
Nevada Bar No. 2137
MICHAEL A. HUMPHREYS
Assistant United States Attorney
U.S. Attorney's Office
333 Las Vegas Boulevard South, Suite 5000
Las Vegas, Nevada 89101
Telephone: 702-388-6336
Facsimile: 702-388-6787
Email: *michael.humphreys@usdoj.gov*
Attorneys for the United States

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) 2:12-CR-373-LDG-(VCF)
)
KIRK ORMAND DAVIS,)
)
Defendant.)

**UNITED STATES OF AMERICA'S MOTION TO CORRECT CLERICAL ERROR,
OVERSIGHT, OR OMISSION FOR FAILING TO ATTACH THE ORDER OF
FORFEITURE TO AN AMENDED JUDGMENT**

The United States of America ("United States"), by and through its attorneys, Daniel G. Bogden, United States Attorney for the District of Nevada, and Michael A. Humphreys, Assistant United States Attorney, respectfully moves this Court to correct the clerical error of failing to attach the Order of Forfeiture (ECF No. 34) to an Amended Judgment in a Criminal Case under Fed. R. Crim. P. 32.2(b)(4)(B) and 36.

The grounds for attaching the Order of Forfeiture to an Amended Judgment in a Criminal Case are (1) the Federal Rules of Criminal Procedure provide that this Court attach and include the Order of Forfeiture in the Judgment pursuant to Fed. R. Crim. P. 32.2(b)(4)(B) and (2) the instrument to correct, to attach, and to include the Order of Forfeiture in the Judgment is Fed. R.

1 Crim. P. 32.2(b)(4)(B) and 36. The United States requests this Court to attach the Order of
2 Forfeiture to an Amended Judgment.

3 This Motion is made and is based on the papers and pleadings on file herein and the attached
4 Memorandum of Points and Authorities.

5 DATED this 14th day of June, 2013.

6 Respectfully submitted,

7 DANIEL G. BOGDEN
8 United States Attorney

9 /s/ Michael A. Humphreys
10 MICHAEL A. HUMPHREYS
11 Assistant United States Attorney
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF THE FACTS**

3 On May 22, 2013, this Court entered Judgment in 2:12-CR-373-LDG-(VCF) (ECF No. 36),
4 convicting Kirk Ormand Davis of Bank Robbery under Title 18 U.S.C. § 2113(a). The Order of
5 Forfeiture entered by this Court on May 13, 2013 was not attached to the Judgment.

6 **II. ARGUMENT**

7 When the Judgment was entered on May 22, 2013, the Order of Forfeiture (ECF No. 34) was
8 not attached to the Judgment (ECF No. 36).

9 “The court *must* also include the forfeiture order, directly or by reference, in the Judgment,
10 but the court’s failure to do so may be corrected at any time under Rule 36.” Fed. R. Crim. P.
11 32.2(b)(4)(B) (emphasis added). “After giving any notice it considers appropriate, the court may at
12 any time correct a clerical error in a judgment, order, or other part of the record, or correct an error
13 in the record arising from oversight or omission.” Fed. R. Crim. P. 36.

14 Federal Rule of Criminal Procedure 36 provides that after giving any
15 notice it considers appropriate, the court may at any time correct a
16 clerical error in a judgment. We have noted and now conclude that the
17 omission of a forfeiture from the judgment ...can be remedied under
18 Rule 36. The failure to include forfeiture in a judgment, that everyone
19 intended to be included, constitutes a clerical error, correctable under
20 Rule 36.

18 This conclusion is reinforced by a 2009 amendment to Rule 32.2 ...,
19 providing that the court must also include the forfeiture order, directly
20 or by reference, in the judgment, but the court’s failure to do so may be
corrected *at any time* under Rule 36.

21 *United States v. Zorrilla-Echevarria*, 671 F.3d 1, 9-10 (1st Cir. 2011) (citations, quotation marks,
22 brackets, parentheses, and ellipses omitted; emphasis in the original); *see Watson v. United States*,
23 2011 WL 4708804, 6 (E.D. Tenn. October 4, 2011) (stating the district court can include a forfeiture
24 order in the Judgment at any time if it failed to do so previously).

25 The forfeiture order must be attached to or included in the Amended Judgment. Fed. R. Crim.
26 P. 32.2(b)(4)(B). The Judgment does not have the Order of Forfeiture attached to or included which

1 Fed. R. Crim. P. 32.2(b)(4)(B) requires the court to do. This failure was clerical error, oversight, or
2 omission which can be, and is legally authorized to be, corrected under Fed. R. Crim. P.
3 32.2(b)(4)(B) and 36. The United States requests the forfeiture order be attached to and included in
4 an Amended Judgment as required and allowed by law. Fed. R. Crim. P. 32.2(b)(4)(B) and 36;
5 *Zorrilla-Echevarria* 671 F.3d at 9-10; *Watson v. United States*, 2011 WL 4708804, 6.

6 **III. CONCLUSION**

7 Based on the foregoing, this Court should attach the forfeiture order to an Amended
8 Judgment.

9 DATED this 14th day of June, 2013.

10 Respectfully submitted,

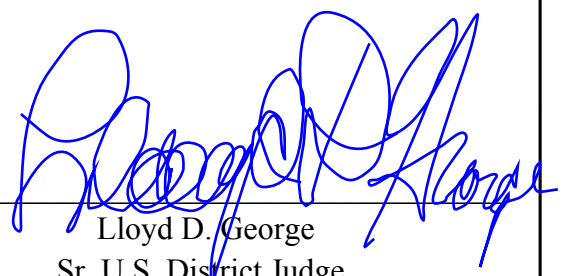
11 DANIEL G. BOGDEN
12 United States Attorney

13 /s/ Michael A. Humphreys
14 MICHAEL A. HUMPHREYS
15 Assistant United States Attorney

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17 ORDER

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19 IT IS SO ORDERED.

20 DATED this 17 day of June, 2013.

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23 Lloyd D. George
24 Sr. U.S. District Judge
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